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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,007	01/29/2004	Susan H. Matthews Brown	017242-011500US	7999

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EXAMINER	
AGRAWAL, CHRISTOPHER K	
ART UNIT	**PAPER NUMBER**
3726	

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/769,007	MATTHEWS BROWN ET AL.	
	Examiner	Art Unit	
	Christopher K. Agrawal	3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-18 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. 10769007/12232005 .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claims 1, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver et. al. (U.S. Patent No. 6,230,349) in view of Hickerson (U.S. Patent No. 5,103,879) and Tanaka et. al. (U.S. Patent No. 5,016,303).**

5. *Claim 1:* Silver teaches a method for making a pillow **10**, the method comprising: cutting at least one piece of fabric to form a pair of skins **46** that each comprise a midsection **20** and two arm sections **30**; sewing the two skins together near their outer edges except for a portion of the midsection to form a shell defining a continuous interior **(Col. 3 line 66 – Col. 4 line 4)** and having a middle region with an opening into the interior and two opposing arms extending from the middle section to form a well region **34**; stuffing a fill material into the interior of the shell **(Col. 3 lines 45-54)** and closing the opening in the middle region **(Col. 3 lines 55-65)**.

6. Silver fails to teach 1) blowing the fill material into the shell, and 2) a pillow firmness defined by an IFD of at least about 20 Newtons with 25% deflection.

7. Hickerson teaches the use of a nozzle 30a' for blowing fill material into articles such as pillows. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the nozzle of Hickerson with the pillow making method of Silver/Tanaka for the purpose of efficient, semi-automated filling of the pillow form.

8. Tanaka teaches a pillow having a firmness defined by an IFD of at least about 20 Newtons with 25% deflection **(Col. 2 lines 58-65)** for the purpose of providing a desired comfort level. It would have been obvious to one of ordinary skill in the art at the time of the invention to have performed the method of Silver to make a pillow having the IFD characteristics of Tanaka for the purpose of providing a desired comfort level.

9. *Claim 4*: Since the structure of the pillow of Silver inherently requires the two areas of the pillow to be stuffed prior to the middle region, Silver/Hickerson/Tanaka also

teach the method of claim 1 as described above wherein the method further comprises the step of blowing the fill material into one of the arms, blowing fill material into the other arm and blowing fill material into the middle region **(Silver Col. 3 lines 45-54)**.

10. *Claim 8:* Silver also teaches the method of claim 1 wherein the fill material comprises polyester **(Col. 4 line 10)**.

11. Silver/Hickerson/Tanaka discloses the claimed invention except for the method wherein the shell is filled to about 2.0 pounds to about 2.5 pounds with the fill material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have filled the pillow to a desirable weight such as between 2.0 and 2.5 pounds, since it has been held that discovering an optimum value involves only routine skill in the art. It is well known in the art to provide a shell size and fill density so as to provide a pillow having desirable physical characteristics. The optimum weight of the pillow could have been determined by one of ordinary skill in the art through routine experimentation. *In re Boesch,* 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

12. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson/Tanaka as modified above, and further in view of Koch (U.S. Patent No. 4,393,520).

13. Silver/Hickerson/Tanaka discloses the claimed invention except wherein the skins have an outer surface and inner surface and wherein in the skins are sewn together with the outer surfaces facing each other and further comprising turning the shell inside out such that the inner surfaces face each other.

14. Koch teaches a method of making a pillow wherein the skins have an outer surface and inner surface and wherein in the skins are sewn together with the outer surfaces facing each other and further comprising turning the shell inside out such that the inner surfaces face each other **(Col. 2 lines 62-67)**.

15. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the inversion method of Koch with the method of Silver/Hickerson/Tanaka considering the very well known and conventional practice of inverting a partially sewn fabric shell for the purpose of concealing the seam.

16. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson/Tanaka as modified above, and further in view of Matthews '185 (U.S. Patent No. 6,279,185).

17. *Claim 5*: Silver/Hickerson/Tanaka discloses the claimed invention except wherein the two skins are substantially identical, with the two arm sections curving so that their ends generally face each other.

18. Matthews '185 teaches a method of making a pillow wherein the two skins are substantially identical, with the two arm sections curving so that their ends generally face each other **(Fig. 1-3; Col. 2 lines 44-46)**.

19. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the method of Matthews '185 with the method of Silver/Hickerson/Tanaka for the purpose of increasing ease and efficiency of manufacture as well as for comfort.

20. *Claim 6*: Silver/Hickerson/Tanaka discloses the claimed invention except for the method further comprising sewing a strip of fabric between the two skins so as to be adjacent to the well region.

21. Matthews '185 teaches a method of making a pillow comprising sewing a strip of fabric **44** between the two skins so as to be adjacent to the well region **(Col. 4 lines 4-5)** for the purpose of eliminating a seal from the mid-plane and for permitting the arms to be separated without tearing.

22. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the method of Matthews '185 with the method of Silver/Hickerson/Tanaka for the purpose of eliminating a seal from the mid-plane and for permitting the arms to be separated without tearing.

23. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson/Tanaka as modified above, and further in view of Matthews '720 (U.S. Patent No. 6,038,720).

24. Silver/Hickerson/Tanaka discloses the claimed invention except for the method further comprising placing the pillow into a package.

25. Matthews '720 teaches a method of placing a pillow in a package **(Fig. 15)** for the convenience of holding the pillow.

26. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the package of Matthews '720 with the method of Silver/Hickerson/Tanaka for the convenience of holding the pillow.

27. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson/Tanaka as modified above, and further in view of Brown (U.S. Patent No. 6,453,493).

28. Silver/Hickerson/Tanaka discloses the claimed invention except for the method wherein the opening is closed by sewing the skins together.

29. Brown teaches a method of closing an opening in a pillow by sewing the skins together **(Col. 1 lines 21-22)** for the purpose of preventing the filler material from inadvertently being removed.

30. It It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the pillow closing method of Brown with the method of Silver/Hickerson/Tanaka for the purpose of preventing the filler material from inadvertently being removed.

31. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver et. al. (U.S. Patent No. 6,230,349) in view of Hickerson (U.S. Patent No. 5,103,879).

32. *Claim 10:* Silver teaches a method for making a pillow, the method comprising: cutting at least one piece of fabric to form a pair of skins **46** that each comprise a midsection **20** and two arm sections **30**; sewing the two skins together near their outer edges **(Col. 3 lines 25-44)** except for a portion of the mid section to form a shell defining a continuous interior and having a middle region with an opening into the interior and two opposing arms extending from the middle region to form a well region

(Col. 3 lines 45-49); stuffing fill material into one arm; stuffing fill material into the other arm; and stuffing fill material into the middle region **(Col. 3 lines 49-55)**; and closing the opening in the middle region **(Col. 3 lines 55-65)**.

33. Silver does not specifically teach the use of a nozzle for blowing fill material into the interior portion.

34. Hickerson teaches the use of a nozzle **30a'** for blowing fill material into articles such as pillows.

35. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the nozzle of Hickerson with the pillow making method of Silver for the purpose of efficient, semi-automated filling of the pillow form.

36. *Claim 17:* Silver also teaches the method of claim 10 wherein the fill material comprises polyester **(Col. 4 line 10)**.

37. Silver/Hickerson discloses the claimed invention except for the method wherein the shell is filled to about 2.0 pounds to about 2.5 pounds with the fill material. It would have been obvious to one having ordinary skill in the art at the time of the invention to have filled the pillow to a desirable weight such as between 2.0 and 2.5 pounds, since it has been held that discovering an optimum value involves only routine skill in the art. It is well known in the art to provide a shell size and fill density so as to provide a pillow having desirable physical characteristics. The optimum weight of the pillow could have been determined by one of ordinary skill in the art through routine experimentation. *In re Boesch,* 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

38. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson as modified above, and further in view of Tanaka (U.S. Patent No. 5,016,303).

39. Silver/Hickerson teaches the claimed invention except for the method wherein the pillow has a firmness defined by an IFD of at least about 20 Newtons with 25% deflection.

40. Tanaka teaches a pillow having a firmness defined by an IFD of at least about 20 Newtons with 25% defelction **(Col. 2 lines 58-65)** for the purpose of providing a desired comfort level.

41. It would have been obvious to one of ordinary skill in the art at the time of the invention to have performed the method of Silver to make a pillow having the IFD characteristics of Tanaka for the purpose of providing a desired comfort level.

42. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson as modified above, and further in view of Koch (U.S. Patent No. 4,393,520).

43. Silver/Hickerson discloses the claimed invention except wherein the skins have an outer surface and inner surface and wherein in the skins are sewn together with the outer surfaces facing each other and further comprising turning the shell inside out such that the inner surfaces face each other.

44. Koch teaches a method of making a pillow wherein the skins have an outer surface and inner surface and wherein in the skins are sewn together with the outer

surfaces facing each other and further comprising turning the shell inside out such that the inner surfaces face each other **(Col. 2 lines 62-67)**.

45. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the inversion method of Koch with the method of Silver/Hickerson considering the very well known and conventional practice of inverting a partially sewn fabric shell for the purpose of concealing the seam.

46. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson as modified above, and further in view of Matthews '185 (U.S. Patent No. 6,279,185).

47. *Claim 14*: Silver/Hickerson discloses the claimed invention except wherein the two skins are substantially identical, with the two arm sections curving so that their ends generally face each other.

48. Matthews '185 teaches a method of making a pillow wherein the two skins are substantially identical, with the two arm sections curving so that their ends generally face each other **(Fig. 1-3; Col. 2 lines 44-46)**.

49. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the method of Matthews '185 with the method of Silver/Hickerson to manufacture a pillow of C-shaped construction.

50. *Claim 15*: Silver/Hickerson discloses the claimed invention except for the method further comprising sewing a strip of fabric between the two skins so as to be adjacent to the well region.

51. Matthews '185 teaches a method of making a pillow comprising sewing a strip of fabric **44** between the two skins so as to be adjacent to the well region **(Col. 4 lines 4-5)** for the purpose of eliminating a seam from the mid-plane and for permitting the arms to be separated without tearing.

52. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the method of Matthews '185 with the method of Silver/Hickerson for the purpose of eliminating a seam from the mid-plane and for permitting the arms to be separated without tearing.

53. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson as modified above, and further in view of Matthews '720 (U.S. Patent No. 6,038,720).

54. Silver/Hickerson discloses the claimed invention except for the method further comprising placing the pillow into a package.

55. Matthews '720 teaches a method of placing a pillow in a package **(Fig. 15)** for the convenience of carrying the pillow.

56. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the package of Matthews '720 with the method of Silver/Hickerson for the convenience of carrying the pillow.

57. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Silver/Hickerson as modified above, and further in view of Brown (U.S. Patent No. 6,453,493).

58. Silver/Hickerson discloses the claimed invention except for the method wherein the opening is closed by sewing the skins together.

59. Brown teaches a method of closing an opening in a pillow by sewing the skins together **(Col. 1 lines 21-22)** for the purpose of preventing the filler material from inadvertently being removed.

60. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the pillow closing method of Brown with the method of Silver/Hickerson for the purpose of preventing the filler material from inadvertently being removed.

Conclusion

61. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

62. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

63. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher K. Agrawal whose telephone number is (571) 272-3578. The examiner can normally be reached on Mon-Fri 8AM-4:30PM.

64. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Jimenez can be reached on (571)272-4530. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

65. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CKA

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PRIMARY EXAMINER